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CURRENT TOPICS

Leasehold Reform

THE Government's proposals for leasehold reform, set out in the White Paper (Cmd. 8713, H.M. Stationery Office, price 9d.) published on 22nd January, like those of the Jenkins Committee published in June, 1950, reject enfranchisement (i.e., a proposed right of the leaseholder to buy the freehold) as a remedy, and state that the main practical need for long leaseholders, the expiry of whose leases is in sight, is for security of tenure rather than freehold ownership, especially having regard to the manifold difficulties in the way of applying any scheme of enfranchisement. It is proposed that occupying residential tenants under long leases shall be protected in their occupation notwithstanding that they have no protection under the Rent Restriction Acts owing to their rent being less than two-thirds of the rateable value, provided that they are otherwise within the rateable values specified in the Acts. Where the lease was for more than twenty-one years, the tenant is to have security of tenure on the expiry of his tenancy. The landlord may, on giving suitable notice, either seek possession on statutory grounds, or make proposals for the creation of a statutory tenancy. Either party would have the right of appeal to the county court, which would be assisted by technical assessors. The reasonable rent fixed by agreement or by the tribunal is to be the standard rent.

Business and Professional Occupation

THE proposals in the new White Paper for business tenants include provision for persons occupying under tenancies for professional purposes. The landlord, in the Government's view, should have the right to resume possession if he requires the premises for his own occupation or for redevelopment. If not, he is entitled to a fair contemporary market rent and the occupying tenant who is willing to pay such a rent, it is stated in the White Paper, has a greater right to the tenancy than any alternative tenant. In cases of dispute the terms will be fixed by the court. The sitting tenant will lose this prior claim if he is in substantial breach of his covenants or is otherwise an unsatisfactory tenant, or has declined an offer of suitable alternative accommodation, or has failed to exercise a reasonable contractual option for the renewal of his tenancy. The right to compensation, it is proposed, should be limited to cases where the landlord has succeeded in getting possession for his own business, or for development. Compensation should be a sum equal to the rateable value of the premises where the tenant has been in occupation for not more than fourteen years, and to a sum equal to twice that value when the tenant has been in occupation for more than fourteen years. No compensation should be payable if the tenant has been in occupation for less than five years. The proposals are to be embodied in a Bill which will probably be introduced next session. In the meantime a Bill has been introduced in the House of Lords to extend until Christmas 1954 the provisions of the Leasehold Property (Temporary Provisions) Act, 1951, which stayed the expiry of long leases and enabled shopkeepers to apply for renewals of their leases of up to two years.

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A New Road Traffic Bill ?

MR. GURNEY BRAITHWAITE, Parliamentary Secretary to the Ministry of Transport, and Chairman of the Road Safety Committee, gave the news in a broadcast on 19th January that the Government hoped as soon as possible to introduce a new Road Traffic Bill. They wanted to improve the standard of vehicle lighting, and to make some experiments in safeguarding pedestrians. A revised Highway Code would be published some time this year. It is encouraging, having regard to measures recently undertaken, that fewer people appear to have been killed on the roads last year than in any normal year since records were started in 1926. The provisional total of fatal casualties was 4,705, a reduction of 515 as against 1951. During 1948, an abnormal year, when petrol rationing was in force, the figure was 4,513. It is to be hoped that every priority will be given to the new Road Traffic Bill, and that, when it is put forward, it will give full recognition to the principle that it is the motorist who must remain primarily responsible for the control of a lethal vehicle, and it must be his absolute duty so to train himself that he will have complete control of it at all times. This duty should be enforceable by the courts through the generous imposition of disqualifications and fresh driving tests whenever negligent driving is proved.

Trade Protection

TRADE protection, to most business people and their legal advisers, means mainly a combination of the functions of communicating confidential information as to the credit of prospective purchasers and the collection of debts. The Mutual Communication Society, which on 20th January celebrated the 150th anniversary of its formation at the British Coffee House, Cockspur Street, claims to be the oldest of the societies concerned with trade protection. In its original book of rules, there is castigation of the "multiplied devices of unprincipled men, in the habitual practice of every artifice and design, for the purpose of obtaining credit or goods, under false pretences, by the use of fictitious names, places of abode, or recommendation, continual change of residence, eluding payment in a variety of ways or protracting the usual periods of settlement under a number of subtle evasions . . ." There were few tricks, apparently, known to the modern criminal and bankruptcy practitioner which were unknown to the founders of this excellent society. To-day, it claims to be "a most formidable check on the malpractices of the unprincipled." It is a non-profit-making concern, with an honorary committee and 806 members, including most of the large shops and stores throughout Britain. It also provides a world service. It relies more on the excellent principle of mutual aid than merely on routine inquiry. The names of persons by whom any of its members have been defrauded are registered with the society, and through its sources of information the society recovers many debts, including debts up to twenty years old. Last year its debt collection reached a record figure of £114,101. No names in the register may be divulged beyond members, and no member may give wrong information which shows malicious or slanderous intent.

A Police Achievement

UNEXPECTEDLY good results have been achieved by the City of London Police with the aid of a special squad formed in April, 1952, so that during the last eight months of that year there was a reduction of 36 per cent. in the number of cases of larceny inside premises, as compared with the same period in 1951, and all indictable crime was reduced by 15·9 per cent. For office, warehouse and shop breaking, the figure for 1952 was 11·1 per cent. lower than in 1951, and detected crime rose by 2·8 per cent. Larceny of and from vehicles in the street rose by 6·4 per cent., and there was an increase of 2·5 per cent. in the number of detected cases. These figures are contained in a report by the City of London Police, published on 23rd January, which goes on to say that it is gratifying to know that as a result of their campaign "a valuable liaison has been established and a much closer link woven between the police and the public." As regards business premises, one of the methods adopted has been to secure the appointment of a member of the staff in each department as security officer, or to join with other houses in the appointment of a paid security officer, to act in co-operation with the police in correcting careless habits and generally in ensuring the safeguarding of premises. Some 450 persons have been appointed. Propaganda by means of some 6,000 letters, 7,000 personal calls, and 20,000 leaflets has been undertaken. It all goes to show that where there is a will there is a way, no matter how few may be there to do the work. This is an example for other police forces to follow.

A Conveyancer's Diary

NATHAN COMMITTEE: DEALINGS IN LAND SUBJECT TO CHARITABLE TRUSTS

THERE are three separate sets of provisions which at present restrict or otherwise affect dealings in land where either the grantor or the grantee is a charity. The Nathan Committee's examination of all these provisions shows the difficulty of relating one set of these to another, or affording any adequate explanation of the continuation of many of the purely restrictive provisions in this branch of the law into the twentieth century. The committee's recommendations are that this part of the law of charitable trusts should be drastically overhauled.

The three sets of provisions are as follows: those forming part of the legislation to be found in the Charitable Trusts Acts of the last century; those arising out of the mediæval law of mortmain; and finally, those usually described under the head of "charitable uses" which were designed to restrict the making of gifts by testators on their death beds in favour of certain charitable objects, a type of gift which was long regarded as being particularly susceptible to undue influence. Shortly, the committee recommends that the Charitable Trusts Acts provisions should be tidied up and brought up to date, and that the mortmain and charitable uses provisions be repealed altogether.

The Charitable Trusts Acts, notably those of 1853, 1855 and 1860, conferred on the trustees of charitable endowments fairly extensive powers, and imposed on them fairly extensive restrictions in connection with the acquisition and disposal of land. As a result of this legislation, which overrides the terms of any particular trust and thus forms a code for

charitable trustees generally, trustees of endowed charities are enabled to do a number of things, such as sell or exchange land, grant building and mining leases, and raise money for the proper purposes (broadly speaking) of the trust by mortgage of trust property, whether the terms of the trust authorise them to do these things or not; but the statutory powers so conferred on trustees may only be exercised with the consent of the relevant central authority, i.e., the Charity Commissioners or, in the case of an educational foundation, the Ministry of Education. These powers were extended by s. 29 of the Settled Land Act, 1925, which in effect conferred upon the trustees of land held on charitable trusts the powers of a tenant for life and of the trustees of a settlement in relation to that land; but the powers conferred by this Act were made exercisable subject to such consents or orders being obtained as would have been requisite, had the Act not been passed, if the transactions were being effected under an express power of the trustees; the pre-existing jurisdiction of the Commissioners or the Ministry under the earlier Acts to sanction various transactions was not, therefore, impaired.

The committee does not question the value of certain restrictions being placed on the power of trustees of charitable trusts to deal with land, and, particularly, is of opinion that the power of the central authority to authorise the sale of land by trustees and to impose certain conditions on the method of sale is a valuable power which should be retained. It is pointed out that many charitable trusts are managed by small bodies of trustees who may not be used to transactions of this kind and may, therefore, quite unwittingly, waste the charity's property unless some supervision over their activities is maintained. With one or two small changes in matters of no great importance, the committee recommends that the central authority's powers over the dealings of charitable trustees with land under all these Acts should be retained.

This is a very conservative conclusion, and many practitioners who are familar with the sort of problems that confront trustees when they wish to exercise one of these statutory powers will hope that, if legislation is to follow this report, the opportunity will be taken to repeal s. 29 of the Settled Land Act, 1925, and to substitute for such of the enabling powers as are thereby conferred and as are not duplicated in the Charitable Trusts Acts a single set of powers expressly applicable to charitable trusts and to no other kind of trusts, and expressly subjected to such restrictions as are at present imposed on the exercise of such powers. The kind of referential legislation of which s. 29 is an example is confusing enough to a lawyer familiar with the legislation to which it generally belongs; to the trustee of a charitable trust the inter-relation of that Act and the relevant sections of the Charitable Trusts Acts must be a nightmare. Legislation of a fairly far-reaching character will in any case be necessary in this particular corner of the law of charitable trusts if the committee's further recommendation (which runs through so much of its report)—that mixed charities be placed, generally, on the same footing as endowed charities—is accepted. The opportunity might advantageously be taken to incorporate the whole law of charitable trusts in one statute, or set of statutes.

One further matter falling under this head is dealt with in the committee's recommendations. Under s. 29 (4) of the Settled Land Act, 1925, every assurance of land to charitable uses has to be sent to the Charity Commissioners so that it may be recorded in their books. A similar obligation with the substitution of the Ministry for the Commissioners exists in the case of assurances of land for the purposes of an educational charity under s. 87 of the Education Act, 1944. The Commissioners and the Ministry value these provisions because they help them in ascertaining the existence of newly created charitable trusts. It will be recalled that another of the committee's recommendations is that a complete central register of charitable trusts be compiled and maintained, and if that recommendation is put into effect (a matter of some practical difficulty), the committee feels that the obligation to send assurances to the central authority for purposes of record will lose most of its value and could then be abrogated.

As regards mortmain and charitable uses, the present law is to be found in the Mortmain and Charitable Uses Act, 1888, and two amending Acts of 1891 and 1892. These Acts have a very long history, and the rules which they contain are for the most part re-enactments of provisions which were intended to deal with abuses long since deprived by the passage of time of any significance in the social structure of the nation's life. Although linked together in the titles of the three statutes just mentioned, the laws of mortmain and the laws of charitable uses have no necessary connection, not even a historical connection. The purpose of the statutes dealing with mortmain, beginning with Magna Carta and ending with these Acts (particularly Pt. I of the Act of 1888) was to prevent the accumulation of land in the hands of corporations. Such accumulations were looked upon with disfavour both by the Crown and by its great feudal tenants—by the former because land was then the principal source of wealth and influence, and if allowed to accumulate could threaten the existence of the sovereign's authority locally, and perhaps nationally; by the latter because the perpetual existence of the corporation deprived them of feudal dues which might otherwise have been received on the death of a tenant or his infancy or marriage. The way in which this purpose was achieved by the statutes of mortmain was to forbid the alienation of land in favour of a corporation of any kind without the licence of the Crown, and a prohibition against such alienation still forms the kernel of Pt. I of the Act of 1888.

The law of charitable uses is to be found in Pt. II of the Act of 1888, and in the two amending Acts. Its purpose was to put down a practice which was, doubtless, a recognised abuse in the superstitious age in which this legislation was born—the making of gifts in favour of charity, and particularly (although not exclusively) for religious purposes, under what was felt likely to be the undue influence which spiritual and other advisers could exert on a donor at certain times when donors are susceptible to such influence, particularly when they feel themselves to be near death. This purpose was achieved by requiring that assurances of land by deed must be enrolled, must take effect at once without power of revocation and must be made (unless for valuable consideration) at least twelve months before the death of the grantor. Devises of land for charitable purposes are now permitted by the Act of 1891, but the land devised must be sold within, generally, one year from the testator's death.

Both the law of mortmain and the law of charitable uses are subject to numerous exceptions, some of them contained in the Acts of 1888 to 1892, some in other statutes, some of which overlap and some of which do not. Taken either together or separately, these two branches of the law seem to be full of absurdities. Mortmain affects, in theory, all corporations, but not, of course, all charitable institutions; if a charity is unincorporated, assurances of land in its favour are governed by the law of charitable uses. Again, one would think that a *bona fide* transaction for value in favour of a charitable institution would either be subject to the full

rigour of the law of charitable uses, or be entirely exempted from it; but in fact such an assurance, although exempt from the requirement that unless it is made twelve months before the vendor's death it is void, is still subject to the rule (*inter alia*) that it must take effect at once. Restrictions of this kind, for which no reason intelligible to the modern mind can be found, have made of this part of the law a sort of obstacle race in which some of the participants are excused part of the course, and others, still more favoured, the whole.

Before recommending the total repeal of these provisions in so far as they affect charitable trusts (the only thing with which the committee was, of course, concerned) the committee did consider whether some restrictions might not still be desirable in the case of gifts for religious purposes, but refused to draw a distinction between these and other gifts as being not only difficult to draw, but also unnecessary and ungenerous. This conclusion will give satisfaction to all those who have long regarded this part of the law as an anachronism, which it would be a pity to perpetuate even with the most stringent limitations on its operation. It is to be hoped that this part of the committee's report, together with so much else of value that it contains, will be passed into law without undue delay.

"A B C"

Landlord and Tenant Notebook

"WHITE PAPER" PROPOSALS FOR REFORMS

"GOVERNMENT Policy on Leasehold Property in England and Wales" (Cmd. 8713) examines the pros and cons of a number of suggestions, recent and less recent, for alterations in the law relating to landlord and tenant.

Something like half the White Paper is devoted to the question of "Leasehold Enfranchisement." The weighing of the considerations and the resulting conclusions (which reject enfranchisement) make interesting reading, but as these considerations and conclusions are political and economic rather than legal, discussion would be out of place here. I may, however, express agreement with one point made *passim*: the fact that reversions and terms may have been assigned several times over would make enfranchisement more difficult than might at first appear. Lawyers would, I think, find themselves, on some occasions, called upon to unscramble eggs.

The White Paper then considers, at less length, the matter of "Security of Tenure for Residential Tenants" and favours some extension of protection, in the nature of but not quite similar to "Rent Act" protection, in a number of cases. The underlying idea is that while tenants are not to be given rights of ownership, their rights of occupation are to be preserved. Those who are to benefit are occupying holders of leases of houses which were originally granted for more than twenty-one years, provided that the houses be within the Rent Act rateable value limits (£100 in London, £75 elsewhere) and though the rent be less than two-thirds of the rateable value. A proposal that tenants of houses outside the rateable value limits should qualify for protection was rejected. Tenants who do qualify are to be entitled to remain in possession on the expiration of the lease, whereupon the landlord may either (i) seek possession on the usual Rent Act grounds *or* on the ground that he requires it for the purposes of a scheme of redevelopment, or (ii) make proposals for the creation of a "statutory tenancy." These proposals would have to cover "reasonable" rent and covenants, and if the house was not in repair owing to the tenant's default, would have to provide for repairs being effected by the landlord, who would be reimbursed either by payment of a lump sum or by payment of instalments by the tenant. Failing agreement, a tribunal—and one is glad to note that it is suggested that that tribunal be the county court, assisted as necessary by technical assessors—would settle the point or points in dispute. And the reasonable rent agreed or fixed would be the standard rent "for the period of the statutory tenancy"; the White Paper does not really make it clear whether the landlord is to "propose" a new fixed term or a periodic tenancy, but I think that the former is contemplated.

I do not think that lawyers would find these proposals unworkable, though we may wonder why, since those propounding them proclaim their desire to do away with anomalies, an original grant of over twenty-one years is insisted upon. It seems likely that if the law is so changed many tenancies will be granted for twenty-one years or slightly less at a rent not exceeding two-thirds of the rateable value of the property: whether the instruments be called "ground leases" or not would not matter. For a short history of the exclusion from protection of low-rental tenancies, see Scrutton, L.J.'s judgment in *Mackworth* v. *Hellard* [1921] 2 K.B. 755 (C.A.).

The next part, concerned with "Business Premises," takes up more space, the proposals not being limited to security of tenure reforms. But it is desired to give more tenants of business premises—including those *used for professional purposes*—some security of tenure; without, however, interfering with freedom of contract in the matter of rent reserved by a first letting. A sitting tenant whose tenancy expires should, it is suggested, be entitled to a new tenancy at a "fair contemporary market rent" unless the landlord requires the premises either for his own business or for the purpose of a scheme of redevelopment. In the event of dispute, a tribunal (again the county court is suggested) would fix a "reasonable contemporary rent on a statutory formula and the other terms of tenancy, as is done under the Landlord and Tenant Act, 1927." The statutory formula is, I gather, to be given us in the new measure, the "as is done under the 1927 Act" not being intended to cover this part of the suggestion. It will be very interesting to see what formula is evolved, Parliament having so emphatically declined to commit itself when asked to define "reasonable rent" in other cases, such as the Furnished Houses (Rent Control) Act, 1946, the Landlord and Tenant (Rent Control) Act, 1949, the Agricultural Holdings Act, 1948—or, for that matter, the Landlord and Tenant Act, 1927. In this case, the proposals mention that the statutory formula would have to provide for the exclusion of any value attributable to a tenant's improvements and a tenant's goodwill.

More formula-making is in fact proposed in paragraphs dealing with the amendment of the Landlord and Tenant Act, 1927. Roughly speaking, the Government, agreeing that that statute has not adequately served its purpose in the matter of protection, proposes to introduce what might be called compensation for disturbance, to be payable when the tenant has unsuccessfully sought renewal; and to base the compensation on the length of occupation: viz., a sum equal to the rateable value of the premises if the tenant has been in occupation for not more than fourteen years, twice that amount if occupation has lasted more than that period.

The idea is to ensure that parties shall know, when they enter into a lease, how they will stand when it terminates ; so presumably in the event of rateable value changing during the period, the figure in force at the commencement would count. Then, recognising that there are tenancies of short duration which ought not, in equity, to qualify their grantees for compensation if both parties knew that the landlord would want the premises for himself or for redevelopment purposes when the term ended, the proposal is made that in such cases there should be a right to exclude compensation by agreement, or simply by providing for exclusion in the Act, in the event of occupation lasting less than five years.

There is, of course, no suggestion that the Landlord and Tenant Act, 1927, right to compensation, etc., for loss of goodwill should be abolished ; indeed, it is suggested that the qualifying period be reduced to three years. Otherwise the reforms indicated supplement, but do not replace, the existing law.

Lastly, " Miscellaneous Matters " are considered : improvements, repairs, and restrictive covenants. Mention of any of these is, indeed, likely to conjure up a vision of " disgruntled litigant." But the White Paper does not favour proposals to make uncovenanted improvements to *residential* property the subject of a right to compensation, the reason being that taste and personal preference may make assessment difficult. It is agreed that in principle there is no reason why a landlord of business premises should be, but a landlord of residential premises should not be, restrained from reaping where he has not sown, but it is considered that little harm is done to the late tenant, who would not have made the improvement if he had not thought it worth while. The case for the distinction does not strike one as particularly strong, and one may recall that in the case of business premises and of improvements (i) reinstatement may have to be provided for and (ii) it was decided by *Lambert* v. *Woolworth* (*F. W.*) *and Co., Ltd.* (No. 2) [1938] Ch. 883 that the question whether something is an improvement or not is to be looked at from the tenant's point of view. So the tenant of a dwelling-house who has installed electricity, but whose agreement does not entitle him to compensation, is still to have his grievance !

Dealing with repairs, the White Paper recognises that much hardship has resulted from tenants' ignorance or neglect of their contractual obligations, and adopts the suggestion of a code of standard covenants, to include repairing covenants, to be deemed to be included in leases unless otherwise agreed. Without any intention to belittle the literary qualifications of our Parliamentary draftsmen, I would like to query whether a man or woman who refrains from reading a lease, either before or after signing the counterpart, is likely to study and appreciate the provisions of a statute ?

There is then a proposal to apply the Leasehold Property (Repairs) Act, 1938, to all premises regardless of user or of rateable value, though it appears that the proposals are made largely with a view to relieving tenants of residential properties outside the £100 rateable value limit which have been converted into tenements, the tenants (of the whole) being of moderate means and hard pressed by economic circumstances. It may well be that the 1938 Act was designed to protect " the little man " who found himself faced with an unexpectedly large claim for dilapidations and threat of forfeiture ; but there is no reference to the tenant's means in the sets of circumstances in which leave to proceed with the claim may be given, unless the final set, s. 1 (5) (*e*) : " special circumstances which in the opinion of the court render it just and equitable that leave should be given," authorises the granting of leave merely because the tenant happens to be well able to afford the repairs.

As regards restrictive covenants, the White Paper tells us that the Government accepts " in principle " proposals that even absolute covenants against assigning and sub-letting should be construed as if " without the landlord's consent " were added (which would bring the Landlord and Tenant Act, 1927, s. 19 (1), into play importing a proviso that consent be not unreasonably withheld), and that covenants against changes of user without consent should be construed as providing that consent shall not be unreasonably withheld, and also that *absolute* covenants against the making of improvements and changes of user be construed as similarly qualified. In the case of covenants against alienation, it is added that care must be taken to safeguard the control exercised in the interests of good housing policy and estate management ; which reminds one that the Landlord and Tenant Act, 1927, s. 19, itself is made (by subs. (4)) inapplicable to leases of agricultural holdings.

R. B.

PRACTICAL CONVEYANCING—LIV

SALE OF HOUSES BY LOCAL AUTHORITIES

THE terms of the Housing Act, 1952, and of the Ministry of Housing and Local Government circular 64/52, permitting local authorities to sell houses on certain terms, were considered at 96 SOL. J. 574. A later article (96 SOL. J. 591) made suggestions about conveyancing procedure and the drafting of the necessary documents. The number of houses now being sold varies a good deal from one part of the country to another, and it is doubtful whether the total is considerable. Consequently, it is not proposed to discuss the subject further at length, but a query from a reader has drawn attention to a point on which there may be doubt.

The Housing Act, 1936, s. 79 (1) (*d*), which remains in force, as amended by the 1952 Act, provides that the local authority may, if they think fit, (i) agree to the price being paid by instalments, or (ii) agree to payment or part payment of the price being secured by a mortgage. Local authorities which already make advances to purchasers of houses under the Small Dwellings Acquisition Acts, or the Housing Act, 1936, s. 4, might assume that they should use those powers on sale of their own houses, but circular 64 states that it is neither necessary nor appropriate to do so.

How, then, should the necessary assistance be given to a prospective purchaser ? This is a problem left to be decided by the solicitor acting for the authority.

First, let us assume the authority decide that the price may be paid by instalments (whether this is done or a mortgage is taken, the rate of interest and the period for repayment are at the discretion of the authority). Precedents of a contract for sale on these terms are to be found in the Encyclopædia of Forms, 3rd ed., vol. 14, pp. 462 and 466. Form 43 (p. 462) provides for early completion, outstanding instalments being secured either (*a*) by mortgage (which is not relevant to the decision of the authority now under discussion), or (*b*) by covenant. No local authority could be properly advised to rely on personal covenant alone, and so this form is not helpful. Form 44 (p. 466) contains clauses under which the property will be conveyed when all instalments have been duly paid. Clearly this is more satisfactory,

but the retention of the legal estate by the local authority for many years may not be convenient.

The second alternative, namely, the execution of a mortgage back to the authority, seems to be the better. If it is desired to insert in the contract of sale terms that part of the purchase-money shall be left on mortgage repayable by instalments, precedents may be found in Key and Elphinstone, 14th ed., vol. 1, pp. 466, 467. No particular form of mortgage seems necessary and a legal charge is quite satisfactory. Forms 20 and 21 in the Encyclopædia, vol. 10, pp. 104, 105, contain clauses for insertion in the mortgage making provisions for payment by instalments.

An interesting procedure, not often used, is to combine in one document the conveyance and the mortgage back to the authority; see the precedent in the Encyclopædia, vol. 10, p. 321. In practice this is probably not worth doing. No stamp duty is saved as *ad valorem* duty is payable on both the purchase-money on the conveyance and on the mortgage money. Further, the conveyance will necessarily be somewhat lengthy without the addition of the mortgage provisions. If the combined form is used there would appear to be no reason why the purchaser's solicitor should not charge the usual scale charges on both conveyance and mortgage. Any local authority adopting this will be likely to insist on use of a standard form which should be provided for in the contract to sell.

The conclusion is that the most convenient procedure will usually be the execution of a mortgage to the authority in normal form, but with provision for payment off by instalments. The Ministry statement that the procedure under the Small Dwellings Acquisition Acts or the Housing Act is not applicable does not mean that the authority should not enter into a mortgage to secure part, or the whole, of the purchase-money.

J. G. S.

HERE AND THERE

JACK AND THE GIANT

THE story of Jack the Giant Killer is not so much a fable as a transcription into universal terms of an experience which is repeated in a contemporary context generation after generation. If the continuity of the story sometimes passes undetected it is because the giant has a protean versatility in changing his shape and his tactics. His huge head may be crowned with a coronet or a mitre or a bowler, with a turban or a cocked hat or a spiked helmet or a peaked cap. His voice may be harsh and peremptory in command, or softly insinuating, or coldly remote and analytical. So for a while he may stand unrecognised, while earnest, worthy men whom he has passed by will go on for years fighting the substanceless shadow he has thrown behind him, a tyrannical aristocracy or a rampant clericalism, a militant France or a Jingo Britain, long after he has returned in another form and stands so close behind them that he is too vast to be seen for what he is and seems to blend with the natural landscape like a tree, or a tower or a rock. The best that Jack can ever do is to know his enemy and stand his ground, and with any luck his little friends would rally to his aid as the swarming Lilliputians banded together to peg down enormous Gulliver. If things have not gone too far the strongest strands for the purpose are the bonds of the law. There are more giants than one striding over the world to-day, like the dinosaurs in the primeval dawn, but the one that is actually looking over our shoulders and breathing down our necks is the technocracy of the managerial State. He could have been seen quite a long time ago and quite a long way off and he took a big step forward through the English pastures when the Milk Marketing Board was conjured out of the void. Since then we have seen the day when the giant, like the beauties of old, has bathed daily in milk, for it has been decided by his experts that oceans of milk are better than creamy butter or delicious cheeses from remote farmhouses or the beef or mutton or veal of Old England. The splashing of his huge body, like a leviathan in a white sea (for he is no beauty), has come to seem almost like a law of nature, irresistible and unquestionable. Yet while he was in full gambol recently Jack caught his toe, albeit only in a little 40s. noose, with the prospect of a decidedly sobering effect. This Jack is a Kentish dairyman and by him the giant, in the guise of the Ministry of Food, was pulled up uncommonly sharp in the Tunbridge Wells County Court.

THE MILKY WAY

PUT in its simplest terms what had happened was this. The Ministry sold milk to the dairyman. The dairyman resold the same milk to the public. A sampling officer from the Ministry tested the milk and found it deficient in butter fat. The Ministry prosecuted the dairyman and the dairyman was fined. Now in a county court action the dairyman has been held blameless and awarded damages from the Ministry. There are other loops in the river of this Milky Way, such as the farmer whose herd supplied the liquid via the Milk Marketing Board and the Ministry, and the whole consequential chain of the milk that Jack sold could be linked in the same sort of jingle as the House that Jack Built, but the ultimate conclusion of the court's decision produces the not wholly unreasonable situation in which the Ministry must see that the milk it sells conforms to its own definitions of quality. There were, no doubt, the soundest administrative reasons for what outside Whitehall looks like the rather lopsided application of the doctrine of *caveat emptor*, whereby responsibility started precisely at the point where monopoly ended and the giant might penalise Jack for innocently selling in a bottle the very liquid that the giant himself has been heedlessly selling in a flood. But in this respect at any rate the law would not seem to be yet a respecter of sound administrative reasons.

DRUNK OR SOBER?

YOU remember Dr. Bicknell's book on The English Complaint (perpetual lassitude and weariness arising from chemicalised food and general under-nourishment). You may have noticed not long ago its partial serialisation in one of the daily papers. Well, now it's turned up in the Temple. A motorist who had parked his car by the roadside and gone to sleep over the steering wheel had the misfortune to be noticed by a policeman and prosecuted on a charge of being drunk in charge of it. But the doctor's book suggested to him an answer new in this class of case, for among the material which he provided for the defence was a clipful of newspaper cuttings and an indignant assertion that he was not drunk at all; he was only suffering from the English complaint. *A propos* of that, there was a case not very long ago of a similar prosecution but a very different defence. According to the evidence the defendant, a man no longer young, had been put through various tests at the police station and the police surgeon had intimated that in his opinion he was drunk. "You say I'm drunk," said the defendant; "well, can *you* do this?" He then stood on his hands and walked with perfect steadiness across the charge-room floor. This piece of evidence, when it was presented, duly emphasised by counsel for the defence, so impressed the tribunal that there was an immediate acquittal. After the case was over the defendant remarked to his counsel, "You know, I must have been damned drunk to be able to do that."

RICHARD ROE.

Sir Douglas McCraith, solicitor and company director, of Bingham, Nottinghamshire, left £68,040.

REVIEWS

The Law of Contract. Third Edition. By G. C. CHESHIRE, D.C.L., F.B.A., of Lincoln's Inn, Barrister-at-Law, and C. H. S. FIFOOT, M.A., of the Middle Temple, Barrister-at-Law. 1952. London: Butterworth & Co. (Publishers), Ltd. £2 2s. net.

The earlier editions of this work were welcomed particularly on behalf of those students who are interested to look a little more deeply into their subject than is strictly necessary for examination purposes, and of those practitioners who, in their search for the appropriate principle of law, like to come across something more than a digested statement of an authority or proposition. Unlike some other estimable law books, Cheshire and Fifoot is still in the formative stage in the sense that its original authors, the architects of its scheme, are still happily with us and so have been able themselves in the new edition with perfect harmony of style to make the revisions and amendments which the flowing tide of judicial decision has rendered necessary.

The result is an up-to-date exposition of the most fundamentally important of all legal topics. Nowhere is the essentially practical nature of the authors' treatment—never merely academic—better demonstrated than in the short section on the modern manifestations of the contractual principle, in which it is emphasised that, pervasive as is the mass-produced contract ("uniform documents which must be accepted by all who would deal with large-scale organisations"), individual contracts still abound, and that in any case the law remains the same for both types of obligation. We have re-read, too, with especial pleasure the discussion of the differing approaches of common law and equity to the problem of the enforcement of a contract by a stranger to it. The neglect of all equitable matters in *Dunlop* v. *Selfridge* and the consequences of that oversight are most skilfully developed.

An example of the use made of recent decisions is the introduction into the chapter on severance in connection with illegal contracts of the test suggested by the Court of Appeal last year in *Bennett* v. *Bennett*. But the authors are at their most characteristic in dealing with problems still open, such as the ultimate correctness of the decision in *Angel* v. *Jay*. Here the *dicta* on each side are dispassionately set forth as a sort of appendix to a discussion of the origin of the rule and the reason for it coupled with a cogent submission in favour of restricting its scope.

Employer's Liability at Common Law. Second Edition. By JOHN MUNKMAN, LL.B., of the Middle Temple and North-Eastern Circuit, Barrister-at-Law. 1952. London: Butterworth & Co. (Publishers), Ltd. 30s. net.

The second edition of this useful book shows a good deal of detailed revision as compared with the first which we welcomed three years ago, and the resulting text is more than 130 pages longer. New chapters appear on the general principles of negligence and on the liability of third parties to an injured workman. As the author points out, the liability of an employer to other workmen besides his own is thus included in the scope of the treatise.

With his eye justifiably on the wide circle of laymen interested even in the technicalities of this subject, Mr. Munkman has added a glossary of legal terms. This is no doubt useful, but the work remains what it was designed to be—a textbook of the law on a topic of great practical importance, and solicitors may rely on it as such.

An Explanation of The Excess Profits Levy. By H. A. R. J. WILSON, F.C.A., F.S.A.A., F.C.I.S. 1952. London: H. F. L. (Publishers), Ltd. 8s. 6d. net.

This book of just over 100 pages should meet the requirements of those who are looking for a concise and practical guide to the working of the levy at a reasonable price. The three important matters of standard profits, changes in ownership and groups of companies are dealt with in sufficient detail to meet everyday working requirements, at any rate at this early stage of the working of the levy, and the illustrations are adequate and well set out to explain the text. Numerous references are made to relevant decisions on the excess profits duty and the excess profits tax and there is a well arranged index. The author is well known as a writer on taxation matters and this unpretentious but workmanlike volume will add to his reputation.

Current Law Consolidation—I. 1947-51. General Editor: JOHN BURKE, Barrister-at-Law. Consolidation Editor: CLIFFORD WALSH, LL.M., Solicitor of the Supreme Court. 1952. London: Sweet & Maxwell, Ltd; Stevens & Sons, Ltd. £9 9s. net.

In this consolidation the Current Law Year Books for the years 1947–51 have been brought up to date and reassembled with an index fuller than those in the individual volumes. The style remains that which practitioners have come to value so highly in the celebrated "Year Books"; it is designed to give the greatest possible number of footholds to the chaser of elusive points. One's admiration for the editors who have succeeded in mapping in such detail the mountainous growth of five years is unbounded.

The Post Office London Directory for 1953. One hundred and fifty-fourth Annual Publication. London: Kelly's Directories, Ltd. £5 net.

The publishers express a mild regret at the idea which, they say, is sometimes held, quite wrongly, that one edition of a book of reference such as this differs but little from the previous one. Well, we do not hold that idea, but if we did we should still have the greatest respect for the editors. Even a little difference in such an elaborately planned work would necessitate a lot of hard revision. It is not unknown for reviewers of works of reference to describe them as a mine of information—a double-edged phrase when one remembers that mining is a complex and difficult operation involving the expenditure of much time and energy. Clearly, one of the essentials of a reference book is that it shall yield any particular bit of its information easily and quickly, and this the Post Office London Directory does more handily than a great many less comprehensive works. As for the information it contains, there is far too much of it to list even by headings here, but it may be remarked that in addition to the three best-known sections (alphabetical, trades, and streets) there are separate sections dealing with, among other subjects, law, private residents, Parliamentary information, postal information, City and municipal information, official information, and banking.

OBITUARY

MR. G. FARDELL

Mr. George Fardell, solicitor, of Ryde, died on 10th January, aged 80. He was admitted in 1898 and succeeded his brother as clerk to the Isle of Wight County Magistrates in 1928, being the fifth member of his family in four generations to hold the office. He was succeeded by his nephew in 1945, and since then had been Archdiaconal Registrar in the island. He was a former chairman of the Cowes Harbour Commissioners.

MR. F. W. MERRIMAN

Mr. Frederick William Merriman, solicitor, of Pembroke Dock, died on 12th January. He was admitted in 1898.

MR. C. F. NICHOLSON

Mr. Cuthbert Freer Nicholson, former Town Clerk of Folkestone, died on 11th January, aged 60. He was admitted in 1914.

TALKING "SHOP"

MONDAY, 19TH *January*, 1953.

Are disablement benefits—received, let us say, under a policy of insurance against injury by accident—assessable to income tax? This is yet another question that cannot be answered "yes" or "no." Consideration must be given not only to the nature and duration of the benefits but to the basis of assessment.

The simplest type of benefit is *the single lump sum payment.* Section 123 of the Income Tax Act, 1952, sets out the six "Cases" for assessment under Sched. D and includes (Case III (*a*)) "any interest of money, whether yearly or otherwise, or any annuity or other annual payment . . ." payable, *inter alia*, "as a personal debt or obligation by virtue of any contract." But these words do not seem apt to cover a lump sum payment, which lacks the quality of repeating itself. The position may well be different under Sched. E; the rules applicable to this Schedule now incidentally appear in Sched. IX to the 1952 Act. Rule 1 of Sched. E charges tax upon every person "having or exercising an office or employment of profit . . . in respect of all salaries, fees, perquisites or profits whatsoever therefrom for the year of assessment . . ." Thus, if the disablement benefit arose from an employee's "office or employment of profit" (as it well might, e.g., if the employer required him to insure against aviation risks) an assessment might succeed under Sched. E where it would fail under Sched. D. Moreover, the lump sum payment might be assessed to sur-tax as well as to income tax.

It seems to be arguable whether *benefits payable by instalments which cannot, or do not in fact, exceed one year* constitute in law an "annuity or other annual payment" under Sched. D. Happily this is a point that requires no answer, because it seems to be the practice of the Revenue *not* to charge disablement benefits to tax under that Schedule if the benefits are received for less than a year. Mr. Arthur Greenwood inquired about the Revenue practice by a question raised in the House of Commons on 12th July, 1939, and Sir John Simon (as he then was), then Chancellor of the Exchequer, replied in the sense indicated. A certain amount of other useful information was also supplied and may be found in *Hansard*, columns 2245/2250. Other types of disablement benefits I must leave until to-morrow.

TUESDAY, 20TH

Benefits payable by instalments over a period which *can* exceed one year seem in principle to be taxable under Sched. D. I put the matter in this way in deference to the wording of the Act (s. 123, *supra*) but, in view of Lord Simon's statement, it does not seem to matter that they can exceed one year if in fact they do not.

Oddly enough, there is not much judicial authority on this subject, though in *Forsyth* v. *Thompson* [1940] 2 K.B. 366 Lawrence, J. (as he then was), held that weekly payments received by a member of two mutual insurance societies as a result of that member's permanent disability from accident were taxable; the payments in that case extended over more than one year.

The question of liability of disablement benefits to tax was again raised in the House of Commons on 21st March, 1944 (*Hansard*, columns 669/670), this time by Sir Stanley Reed. Sir John Anderson (as he then was) replied that "continuing benefit paid under an insurance policy through disablement or accident or sickness is assessable to income tax without deduction for expenses incurred by reason of the disability." Sir Stanley Reed's question concerned "disability benefits received by a taxpayer for a continuous period exceeding twelve months under an insurance policy taken out to cover sickness or accident."

With diffidence I now attempt a summary of these propositions:—

(1) All types of benefit may be assessed under Sched. E if the facts fit and justify an assessment;

(2) Under Sched. D a single lump sum payment probably escapes by law; benefits received by instalments over twelve months or less escape uncertainly in law and more certainly in practice (*Hansard*);

(3) Under Sched. D, again, benefits received by instalments over a period exceeding twelve months are assessable in law (*Forsyth* v. *Thompson*) and are in practice assessed without deduction for expenses (*Hansard*).

WEEK-END REFLECTIONS

I turn from the taxation of disablement benefits to the more agreeable topic of legal jargon. I am pleased to find that, in "Plain Words," Sir Ernest Gowers takes such a common-sense view of it. Clients and other uninstructed persons should all read his book. Sometimes, of course, their complaints are justified, as when a solicitor thoughtlessly employs some legal idiom but fails to explain its meaning. More often, I think, such a complaint manifests the writer's or speaker's resentment at the very existence of a legal vocabulary. Or is it to be supposed that all who object are disciples of Dean Swift and Samuel Butler?

Oddly, the very same person who resents the legal phrase will rejoice in his doctor's prescription; the cuneiform script is all part of the cure. His surgeon, also, may take a journey round his inside, and it would be an insult to the National Health Service if he did not employ some very long Latin words to describe the scenery; the longer the words, and the less intelligible, the more important the patient feels and the more quickly he regains health and spirits.

Now this foible of the laity is, to my thinking, somewhat unreasonable, for there is no activity that does not demand its own vocabulary, more or less specialised according to its nature. I pick up a book on roof-construction,[1] specially written for the amateur, and quote the following passage at random:—

> "The whole *truss* is tightened together by the iron *stirrup strap* with its *gibs* and *cotters* which draw the *tie-beam* and the foot of the *king-post* close together, though a gap is always left between the *king-post* foot and the *tie-beam.*"

From a book on plastering[2]:—

> "For a series of *ramps*, wood *templets* can be cut and nailed in position. A short *horse mould* is necessary when running *ramps*, ,and *pegs* or *plates* can be fixed if *wood templets* are used. As with the *short horse*, it would be mostly at the back of the *stock.*"

And from a book on growing fruit trees[3]:—

> "If for example a Quince A *stock* is *budded* with *Pitmaston Duchess* in August, 1943, and the resultant shoot from the bud is cut back in April, 1945, it can be *grafted* with a *Dr. Jules Guyot* pear *scion* and by the autumn of that same year a *maiden Dr. Jules* [*sic*] is forthcoming which will not blow off . . . A friend tells me that *incompatible* pears become *compatible* if *worked on* the *Whitethorn stock* . . ."

But let it not be supposed that if you are a solicitor you may exercise the privilege of the artificer to express himself in his own words. Builders may talk of trusses and tie-beams, plasterers of hawks and short horses, and gardeners of stocks, scions and incompatible pears. The cobbler also may stick to his last, but the solicitor, essaying all human relationship as his science, had better stick to basic English. To this golden rule I know of only the one exception that proves it golden: in the word "hotchpot," especially when misrendered "hotchpotch," the client will always delight.

"ESCROW."

1. *Roofing* (Teach Yourself Series), at p. 41.
2. *Plastering*, by W. Verrall, C.R.P. (Pitman), at p. 1987.
3. *Tree Fruit Growing*, Vol. II, by Raymond Bush (Penguin Series), at p. 15.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

SALE OF PROPERTY: ACTION TO SET ASIDE STRUCK OUT: APPLICATION TO RE-LIST: DISCRETION

Agbeyegbe *v.* Ikomi and Another

Lord Porter, Lord Oaksey, Lord Asquith of Bishopstone
12th January, 1953

At a public auction sale on 27th May, 1938, held pursuant to leave of the court to issue execution against land in West Africa belonging to the appellant judgment-debtor, the land was purchased, subject to the approval of the Governor, by the respondent. A claim by the appellant, brought within the statutory period of twenty-one days, to set aside the sale was struck out by the court on 7th July, 1938, on the application of the respondent, who contended that inasmuch as the Governor had not at that date approved the purchase, there had been no sale. No further proceedings were taken by the appellant for more than nine years, when, on 15th September, 1947, he moved the Supreme Court of Nigeria to re-list the suit which had been struck out on 7th July, 1938. The appellant gave as reasons for the delay the death of his legal advisers, his own illness and the difficulties of ascertaining his true position in the matter. During his occupation following the approval of the purchase by the Governor, the respondent was alleged to have removed some of the buildings on the land and to have rebuilt others.

The judge of the Supreme Court granted leave to re-list the suit, and on the hearing of the action found that the sale was irregular and null by reason of inadequate compliance with the court's directions relating to advertising the auction sale, and that the appellant had sustained substantial injury by reason of the irregularity. An appeal by the respondent to the West African Court of Appeal was allowed on the ground that in the exercise of his discretion the trial judge did not appear to have taken into consideration all the relevant circumstances, including such questions as the extent of the delay in making the application to re-list the case, the reasons for the delay, the nature of the claim and the effect of granting leave upon the rights of the respondent. The appellant appealed.

LORD OAKSEY, in giving the judgment of the Board, said that the length of the delay, the inadequacy of the explanation of the delay and the consequences of setting aside the sale of land as against a *bona fide* purchaser for value who had been in occupation of the land during the whole period since the sale, and had apparently altered the buildings thereon, caused a " balance of justice " in favour of the respondent within the meaning of the *dictum* of Lord Blackburn in *Erlanger* v. *New Sombrero Phosphate Co.* (1878), 3 App. Cas. 1218, 1279, and the case ought not to have been re-listed, and having been re-listed ought to have been dismissed. Appeal dismissed.

APPEARANCES: *S. Cope Morgan*, Q.C., and *F. H. Collier* (*Rexworthy, Bonser & Wadkin*); *R. Millner* and *T. O. Kellock* (*A. L. Bryden & Williams*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.] **[1 W.L.R. 263**

CEYLON: CRIMINAL LAW: APPEAL BY CROWN: JURISDICTION: MURDER: PROVOCATION

A.-G. of Ceylon *v.* Perera

Lord Goddard, C.J., Lord Oaksey, Lord Reid, Lord Asquith of Bishopstone, and Sir Lionel Leach. 12th January, 1953

This was an appeal, by special leave, by the Attorney-General of Ceylon from a majority judgment of the Court of Criminal Appeal of Ceylon, dated 29th November, 1951, which had set aside the conviction of the respondent, K. D. J. Perera, of the murder by shooting of a woman named Kumarihamy on 29th July, 1950. Perera had been found guilty of murder before Gratiaen, J., and a jury on 3rd September, 1951, and sentenced to death. Kumarihamy was the wife of one Samaranayake, and they lived with five of their children on land adjoining that on which Perera lived with his family. There had been ill feeling between the two families, and on 29th July, 1950, Perera shot and killed Kumarihamy and three other members of her family. Stone-throwing by members of the deceased's family at Perera's house, with accompanying verbal insults, were alleged to have constituted provocation sufficient to reduce the offence to culpable homicide not amounting to murder, within the meaning of s. 294 of the Penal Code of Ceylon. The Court of Criminal Appeal of Ceylon held that the jury had been misdirected on the law relating to provocation, and they ordered a new trial. On appeal by the Crown against that decision it was contended that there had been no misdirection by the trial judge, and a preliminary point was taken on behalf of the respondent, Perera, that the Board had no jurisdiction to entertain an appeal by the Crown in a criminal case.

LORD GODDARD, C.J., giving the judgment of the Board, said that Her Majesty in Council had power to entertain an appeal from any dominion or dependency of the Crown in any matter, whether civil or criminal, by whichever party to the proceedings the appeal was brought, unless that right had been expressly renounced (*R.* v. *Bertrand* (1867), L.R. 1 P.C. 520). To bring himself within the exception to s. 294 of the Penal Code and reduce the crime from murder to culpable homicide not amounting to murder the accused must show, first, that he was deprived of self-control, and, secondly, that that deprivation was caused by provocation which in the opinion of a jury was both grave and sudden. The words " grave " and " sudden " were both relative terms, and must at least to a great extent be decided by comparing the nature of the provocation with that of the retaliatory act. It was impossible to determine whether the provocation was grave without at the same time considering the act which resulted from the provocation, and it was wrong to say that because the penal code did not expressly say that the retaliation must bear some relation to the provocation it was true to say that the contrary was the case. There had therefore been no misdirection by the trial judge in directing the jury that a defence of provocation could not succeed, and the charge of murder be reduced to culpable homicide not amounting to murder, unless the action of the accused taken by him in consequence of the provocation was reasonably commensurate with the degree of provocation offered to him. In directing the jury that they must ask themselves whether the kind of provocation actually given was the kind of provocation which they as reasonable men would regard as sufficiently grave to mitigate the actual killing, the judge was merely directing the jury as to how they should determine whether the provocation was grave. In compliance with their announcement at the conclusion of the hearing of the appeal, their lordships would humbly advise Her Majesty to allow the appeal, set aside the judgment of the Court of Criminal Appeal and restore the verdict of the jury and the sentence passed thereon.

APPEARANCES: *Sir Frank Soskice*, Q.C., *Gahan*, Q.C., and *H. A. Wijemanne* (*Burchells*); *Dingle Foot*, *A. B. Perera* and *Biden Ashbrooke* (*T. L. Wilson & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.] **[2 W.L.R. 238**

CANADA: SALE OF LAND: RESERVATION OF "PETROLEUM": VERNACULAR MEANING

Borys *v.* Canadian Pacific Railway and Another

Lord Porter, Lord Tucker, Lord Asquith of Bishopstone, Lord Cohen and the Chief Justice of Canada (Rinfret, C.J.)
12th January, 1953

The appellant was registered in 1947 as the owner of an estate in fee simple of certain property in Alberta which had been acquired by his predecessors in title from the first respondents, Canadian Pacific Railway Co., who in the original conveyance had reserved to themselves " all coal, petroleum and valuable stone." In 1949 the first respondents, in reliance on that reservation, leased to the second respondents, Imperial Oil, Ltd., all petroleum that might be found within, upon or under the land, together with the exclusive right to work, win and carry it away for a period of ten years. There was under the appellant's property and the lands adjoining it a large reservoir of petroleum which was found in a bed of porous rock underlying the appellant's land and the surrounding property, which contained at the bottom water, then the petroleum, and on top a layer of gas. The porous rock and the other substances were held in a container which was impervious and shut them off from such of the surrounding land as lay outside it, but within the container itself they could move from place to place, and any withdrawal of water, petroleum or gas from one portion of the container normally resulted in the

filling of the vacant space by one of those three substances. The appellant claimed a declaration that all the natural gas within his land, whether it was found in solution in the petroleum (due to the high pressure and high temperature to which the materials in the container were subjected) or in a free state, belonged to him, and for an injunction restraining the respondents from working the petroleum in such a way as to waste or to interfere with his natural gas.

LORD PORTER, giving the judgment of the Board (which affirmed the judgment of the Supreme Court of Alberta (Appellate Division)), said that there was evidence to justify the concurrent findings of fact of the courts below that petroleum and gas, though each was a combination of the same elements, were separate substances, and accordingly the substance which was found in the form of gas *in situ* was not therefore the subject of reservation and remained the property of the appellant. As a matter of construction from the facts as given in evidence, however, the reservation of " petroleum "—a word of which the vernacular, not the scientific, meaning had to be sought—included gas in solution in the liquid as it existed in the earth, and therefore all the petroleum reserved, including all hydrocarbons in solution or contained in the liquid in the ground, was the property of the respondents (*dictum* of Lord Halsbury, L.C., in *Lord Provost and Magistrates of Glasgow* v. *Farie* (1888), 13 App. Cas. 657, 669). Although the right to work the petroleum granted in the lease to the second respondents was a right which had not been specifically reserved in the original conveyance, the absence of a clause giving a right to work did not abrogate or limit the powers of the respondents. Inherently, the reservation of a substance made the reservation useless unless the right to work followed the grant. The true view was that such a reservation necessarily implied the existence of the right of working (*Rowbotham* v. *Wilson* (1860), 8 H.L. Cas. 348; *Ramsay* v. *Blair* (1876), 1 App. Cas. 701, 704). As the second respondents had a direct grant of the petroleum, whereas the appellant had merely such residual rights as remained in him subject to the grant to the respondents, it could not be held that the respondents were under an obligation to conserve the appellant's gas—a fugacious element—with the consequent denial of their right to recover the petroleum in the usual way. Accordingly, there was no obligation on the respondents to take steps to prevent the egress of the gas or to refrain from connecting the orifice with the oil bed.

APPEARANCES: *G. H. Steer*, Q.C., and *H. W. Riley*, Q.C. (both of the Canadian Bar) (*Charles Russell & Co.*); *Geoffrey Cross*, Q.C., *S. J. Helman*, Q.C. (Canadian Bar), *Gahan*, Q.C., and *J. G. Le Quesne* (*Blake & Redden*); *H. G. Nolan*, Q.C., *J. W. Hamilton*, Q.C., and *J. F. Barrett* (all of the Canadian Bar) (*Lawrence Jones & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.] **[2 W.L.R. 224**

WEST AFRICA: TITLE TO LAND: TRADITIONAL EVIDENCE: NEW POINT OF LAW: EXCEPTION TO CONCURRENT FINDINGS RULE

Stool of Abinabina *v.* Chief Kojo Enyimadu (for the Stool of Nkasawura)

Lord Normand, Lord Reid, Lord Cohen. 12th January, 1953

The appellants claimed a declaration of their title to certain lands, known as Nkasawura lands, in West Africa, to which the respondents, who had admittedly been in possession of them for many years, also claimed to be entitled. The appellants alleged that tribute had been paid to them by the respondents for a number of years in respect of the lands, and that whether or not tribute was proved to have been paid the respondents were only in occupation of the lands by the appellants' leave and licence. The evidence called on both sides was partly traditional—as to rights alleged to have existed beyond living memory—and partly factual as to events within living memory. The trial judge, in summing up his conclusion in favour of the respondents, said that in claims for declaration of title the plaintiff " must evidence such positive and numerous acts within living memory sufficiently frequent and positive to justify the inference that he is the exclusive owner," and he held that the appellants had failed to satisfy that test. On appeal by the appellants to the West African Court of Appeal the decision of the trial judge was affirmed without qualification, and they made no observations as to the nature of the evidence required to establish title.

The appellants now appealed on the ground, *inter alia*, that the trial judge was wrong in holding that sufficient and frequent positive and numerous acts within living memory were necessary to establish title and, inferentially, that such title could not be supported by traditional evidence alone.

LORD COHEN, giving the judgment of the Board, said that although the point as to evidence was not taken before the West African Court of Appeal, it involved a substantial point of substantive law, and as it was plain that no further evidence could have been adduced which would affect the decision of it, the Board would therefore entertain it. The opinion of the trial judge that frequent and positive numerous acts within living memory were essential to justify the inference of exclusive ownership, with which opinion the West African Court of Appeal must be taken to have agreed, was not well founded (*Nchirahene Kojo Ado* v. *Buoyemhene Kwadwo Wusu* (1938), 4 W.A.C.A. 96; *Nchirahene Kojo Ado* v. *Buoyemhene Kojo Wusu* (1940), 6 W.A.C.A. 24; *Kwamina Kuma* v. *Kofi Kuma* (1939), 5 W.A.C.A. 4). The appellants had satisfied the conditions which brought into operation the exception to the rule as to concurrent findings of fact which, as stated in *Srimati Bibhabati Devi* v. *Kumar Ramendra Narayan Roy* [1946] A.C. 508, 521, was that " in order to obviate the practice, there must be some . . . violation of some principle of law or procedure," as therein defined. The order of the courts in West Africa must be discharged, and as it was plainly a case where their lordships themselves could not reach a conclusion on the evidence, there must be a new trial.

APPEARANCES: *Dingle Foot* (*A. L. Bryden & Williams*); *Khambatta*, Q.C., and *T. B. W. Ramsay* (*T. L. Wilson & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.] **[2 W.L.R. 261**

CEYLON: GIFT BY MOHAMMEDAN TO MINOR: ACCEPTANCE: LAW APPLICABLE

Muheetha *v.* Leyaudeen and Others

Viscount Simon, Lord Morton of Henryton, Lord Cohen and Sir Lionel Leach. 12th January, 1953

The parties to this appeal were Mohammedans residing in Ceylon. On 28th June, 1927, Saffra Umma, the paternal grandmother of the respondents, who were then minors, executed a deed of gift of immovable property in their favour with a *fidei commissum* as known to Roman-Dutch law for the benefit of the children of the donees on the death of their parents. The mother of the respondents purported to accept the gift on their behalf. On 4th February, 1928, Saffra Umma executed a document by which she purported to revoke the deed of gift in favour of the respondents and to grant the property to an uncle of theirs who, on the death of Saffra Umma on 6th December, 1939, went into possession of the property. On 27th September, 1942, the respondents, who were then of full age, brought this action for a declaration that they were entitled to the property. The district judge granted the relief they sought, and on appeal by the uncle's widow (he having died during the pendency of the appeal) the only argument addressed to the Supreme Court of Ceylon in support of the appeal was that the deed of gift to the respondents was bad for want of acceptance valid under Muslim law. In the result the Supreme Court dismissed the appeal. The appellant now appealed.

Sir LIONEL LEACH, giving the judgment of the Board, said that Mohammedans in Ceylon were governed by their own personal law as it subsisted under the ancient Government of the United Provinces, except so far as it might have been altered by statutory enactment. Accordingly, Muslim law, not Roman-Dutch law, governed, in the matter of acceptance, the gift of immovable property in favour of the minor respondents, although there was embodied in the deed conveying the property a *fidei commissum* as known to Roman-Dutch law—which was completely alien to Muslim jurisprudence. The intention of the donor that Roman-Dutch law should apply in determining who could accept the gift on behalf of the minors was not a relevant factor in determining the authority of the minors' mother. The question of her authority to accept the gift depended on the proper law applicable under the law of Ceylon in determining the capacity of infants and the authority of guardians to enter into binding agreements on their behalf. While under Muslim law, as administered in India, a mother was not a person who had inherent authority as a guardian of the property of her infant children, it was by no means clear that that provision of Muslim law had found acceptance in Ceylon, and the Board were not prepared to dissent from the conclusion of the Supreme Court of Ceylon in this case that under the Muslim law as received in Ceylon and in the circumstances of this particular case, the mother had the necessary authority to accept the gift. Their lordships would observe, however, that the authorities as to the extent

to which and the form in which general Muslim law had been received into Ceylon, seemed very conflicting, and they would venture to hope that the question of resolving by legislation the doubts which that conflict of authorities must create might receive early attention. The appeal would be dismissed.

APPEARANCES: *Quass*, Q.C., *Dingle Foot* and *S. Canagarayar* (*Lee & Pembertons*); *Stephen Chapman* (*Smiles & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.] **[2 W.L.R. 266**

CHANCERY DIVISION

WILL: UNCERTAINTY: DEVISEE TO BE "A MEMBER OF THE CHURCH OF ENGLAND AND AN ADHERENT TO THE DOCTRINE OF THAT CHURCH"

***In re* Allen, deceased; Faith *v.* Allen**

Vaisey, J. 13th January, 1953

Adjourned summons.

A testator devised certain freeholds, after life interests, to the eldest of the sons of his nephew *F* "who shall be a member of the Church of England and an adherent to the doctrine of that Church." A summons was taken out to ascertain, *inter alia*, whether or not the gift was void for uncertainty.

VAISEY, J., said that, apart from authority, the meaning of the expression "a member of the Church of England" was by no means settled or ascertained. Any parishioner had the right to be buried in the parish cemetery, to bring his child for baptism to the parish church, and to be married in that church; so that a parishioner might in a sense call himself a member of the Church, even though he had never been a practising churchman. Non-conformists were apt to describe themselves as members of the Church of England who do not conform. A narrower meaning indicated a person who had been baptised and confirmed, regularly attended church services, and had his name on the parish electoral roll. Between these views there were people who did not know much about it and, if asked, would describe themselves as "C. of E." to save trouble. All that was vague enough, but there were the additional words, "an adherent to the doctrine of that Church." That raised difficulties as to the degree of adherence required; there were degrees of adherence which it was impossible to define, and the expression was wholly unqualified in quality and degree. This conclusion was supported by *In re Tegg* [1936] 2 All E.R. 878 and the New Zealand cases *In re Lockie* and *In re Biggs* [1945] N.Z.L.R. 230 and 303. The two expressions used by the testator were void for uncertainty, both singly and in conjunction. The gift, therefore, failed. Declaration accordingly.

APPEARANCES: *R. O. Wilberforce*, *J. P. Hunter-Brown* (*Thicknesse & Hull*); *N. P. M. Elles* (*Hore, Pattisson, Bathurst, Summerhays & Co.*); *D. A. Ziegler* (*Andrew, Purves, Sutton and Creery*); *H. A. Rose* (*Robbins, Olivey & Lake*); *C. D. Richmount* (*Helder, Roberts & Co.*, for *Walters & Williams*, Carmarthen).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 244**

WILL: GIFT TO CHILD PREDECEASING TESTATOR: APPLICATION OF WILLS ACT, 1837

***In re* Basioli, deceased; McGahey *v.* Depaoli**

Upjohn, J. 15th January, 1953

Adjourned summons.

The Wills Act, 1837, provides by s. 33 that when there is a devise or bequest to a child or other issue of the testator for an estate exceeding a life interest, on the child or other issue predeceasing the testator but leaving issue surviving the testator, "such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will." A testatrix by her will made in 1923 gave a freehold house with furniture and effects to her three daughters, and devised other freehold property and effects equally between her son and the three daughters, and gave her residue to trustees for division equally among her children. In 1929 a daughter died intestate survived by a son; in 1937 the testatrix's husband died; in 1939 the deceased daughter's husband died intestate; in 1940 the testatrix died, and in 1949 the daughter's son died while under twenty-one and unmarried. The question arose whether the persons, entitled under the daughter's intestacy to her interests under the will of the testatrix, were to be ascertained as at the actual date of death in 1929, or on the footing that she died immediately after the testatrix in 1940. If the former, those entitled were the daughter's husband's personal representative and the estates of the testatrix and her husband. If the latter, those entitled were the deceased daughter's brother and sisters.

UPJOHN, J., said that two views on the construction of the section had been expressed. One, the narrow view, was that the sole object was to give effect to the gift and to prevent lapse; and that the section was not intended to affect the administration of the donee's estate by imputing an artificial date to the death. The other, or wide view, was that the predeceasing child must be treated, for all purposes relating to the testator's gift, as surviving the testator. The narrow view had the support of *Pearce* v. *Graham* (1863), 32 L.J. Ch. 359, *In re Hensler* (1881), 19 Ch. D. 612, and *In re Hurd* [1941] Ch. 196, in which Farwell, J., said that the section applied only to the prevention of lapse. The same view had also indirect support from *In re Scott* [1901] 1 K.B. 228. Support for the wide view was to be found in *In the Goods of Mary Councell* (1871), L.R. 2 P. & D. 314, where the present question was not argued and the judgment was in summary form, and *In re Allen's Trusts* [1909] W.N. 181, where again the point was not argued. Neither of these decisions was satisfactory, and it would be right to follow *In re Hurd*, *supra*, and pronounce for the narrow view. Declaration accordingly.

APPEARANCES: *Wilfrid M. Hunt*; *T. A. C. Burgess* (*Arnold Carter & Co.*, for *Dunn & Baker*, Exeter).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R 251**

QUEEN'S BENCH DIVISION

ROAD TRAFFIC: WINDOW-CLEANER'S VAN USED TO CARRY HIS IMPLEMENTS: WHETHER A "GOODS VEHICLE"

Clarke *v.* Cherry

Lord Goddard, C.J., Croom-Johnson and Pearson, JJ. 14th January, 1953

Case stated by Lincolnshire justices.

The defendant, a window-cleaner, used a motor van for the conveyance of the buckets, ladders, etc., used by him as the tools of his trade. He was charged with unlawfully using a goods vehicle for the carriage of goods for or in connection with a trade or business without holding a licence granted under Pt. I of the Road and Rail Traffic Act, 1933, which provides by s. 1 (1): "... no person shall use a goods vehicle on a road for the carriage of goods ... (*b*) for or in connection with any trade or business carried on by him, except under a licence," and by s. 36 (1): "'Goods' includes goods or burden of any description." The justices dismissed the information, on the ground that the van was used exclusively for carrying the tools of a trade, and not goods for sale. The prosecutor appealed.

LORD GODDARD, C.J., said that it was not surprising that the justices had tried to avoid a conviction; but they had read words into the Act which were not there. Section 1 said nothing about the goods being carried for sale. The case must be remitted with a direction that an offence had been committed, as the defendant required a "C" licence; but the prosecutor, having established this weighty principle of jurisprudence, would have to bear the expense of doing so.

CROOM-JOHNSON and PEARSON, JJ., agreed. Appeal allowed.

APPEARANCES: *G. R. Swanwick* (*Cunliffe & Airy*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 268**

AUTO-ASSISTED PEDAL CYCLE PROPELLED BY PEDALLING: ENGINE IN WORKING ORDER: WHETHER A MOTOR VEHICLE

Floyd *v.* Bush

Lord Goddard, C.J., Croom-Johnson and Pearson, JJ. 15th January, 1953

Case stated by Lancashire justices.

The defendant took and rode away an auto-assisted pedal cycle without the owner's consent; although the engine was in working order he made no attempt to start it up but pedalled the machine for about a mile and a half along a public road. He did not hold a driving licence, and there was no policy of insurance in force in relation to the user of the cycle by him.

He was charged with using a motor vehicle on a road uninsured contrary to s. 35 of the Road Traffic Act, 1930, with driving a motor vehicle without a licence, contrary to s. 4 of the Act, and with taking away the cycle without the owner's consent, contrary to s. 28 of the Act. By s. 1 the Road Traffic Act, 1930, applies to all mechanically propelled vehicles; by s. 2 a motor cycle is defined as a mechanically propelled vehicle. The justices were referred to *Lawrence* v. *Howlett* [1952] 1 T.L.R. 1476; 96 SOL. J. 397, and being of the opinion that the cycle, as being used at the material time, was not a mechanically propelled vehicle within the meaning of s. 1 of the Act, dismissed the charge. The prosecutor appealed.

LORD GODDARD, C.J., said that it was the view of the court that the justices were wrong and that they had not really appreciated the decision in *Lawrence* v. *Howlett* to which the court had come with hesitation, and in which they had said that the case was exceptional and must not be taken beyond its particular facts. In that case the motor of the cycle had been dismantled and it was no longer a mechanically propelled vehicle because it was no longer capable of being propelled by mechanical power. In the present case the engine was in working order. The Road Traffic Act defined a motor cycle as a "mechanically propelled" vehicle; that meant a vehicle capable of being mechanically propelled. The case of *Lawrence* v. *Howlett* did not apply. In *Shimmell* v. *Fisher* [1951] 2 T.L.R. 753; 95 SOL. J. 625 it was held that any movement of a car was enough to bring the motor within the ambit of s. 28 of the Act; the defendant, without any right, had taken a vehicle equipped to be used and capable of being used as a motor cycle, and propelled it along a road: whether he pedalled or drove it was immaterial. The case must go back to the justices with an intimation that all three offences were proved.

CROOM-JOHNSON and PEARSON, JJ., agreed. Appeal allowed.

APPEARANCES: *R. S. Nicklin* (*Norton, Rose, Greenwell & Co.* for *Sir Robert Adcock*, Preston); *Peter Pain* (*Helder, Roberts & Co.*, for *John A. Behn, Twyford & Reece*, Liverpool).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[1 W.L.R. 242**

PROBATE, DIVORCE AND ADMIRALTY DIVISION

PRACTICE NOTE: EVIDENCE: SHIP'S LOG

Willmer, J. 17th December, 1952

In examination-in-chief a ship's officer in a collision case gave evidence that the entries in the deck movement book and the deck scrap log-book were in his handwriting, and his counsel thereupon applied for and obtained leave from the court to put in these documents as evidence under the Evidence Act, 1938.

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law.] **[1 W.L.R. 262**

SUPREME COURT OF ADEN

INTERNATIONAL LAW: VALIDITY UNDER ENGLISH LAW OF EXPROPRIATORY LEGISLATION OF FOREIGN STATE

Anglo-Iranian Oil Co., Ltd. *v.* Jaffrate

Campbell, J. 9th January, 1953

Action.

In 1933 a convention was made between the Government of Persia and the plaintiffs, whereby the plaintiffs were granted exclusive rights to win oil within a specified area; the convention provided by art. 21 that it should not be altered by legislation, and by art. 22 that disputes should be referred to arbitration before an umpire appointed by the Hague Court. In 1951 the government purported by legislation to nationalise and expropriate without compensation all property vested in the plaintiffs. In 1952 the ship *Rose Mary* entered Aden with a cargo of 700 tons of oil from Persia. This ship was (*a*) wearing the flag of Honduras; (*b*) owned by a corporation registered in Panama; (*c*) under the command of an Italian master; (*d*) chartered by a Swiss corporation, who had bought the oil from the principals of one (*e*) Zonca, the managing director of an Italian corporation which (as he testified) was formed in 1939, under the style "E. P. I. Mexicano," to "exploit" nationalised Mexican oil, but which, after the events which had happened, changed its name to "E. P. I. Medoriante" and turned its attention further eastwards, in January, 1952. The plaintiffs brought an action in detinue in respect of the oil (which was admitted to have come from their concession area), claiming delivery up against the master, owners, and charterers. They contended that the Persian expropriatory law was obnoxious to international law, and ought not to be enforced. The master pleaded (*a*) that he was forced into Aden by coercion; (*b*) that he had no authority to hand over the oil to the plaintiffs; (*c*) that the oil did not belong to the plaintiffs, as their rights in Persia were extinct, and (*d*) that the plaintiffs, not being registered in Aden, could not sue there. The owners claimed a lien on the cargo. The charterers pleaded as the master, and also contended that they were *bona fide* purchasers for value.

CAMPBELL, J., dealing first with the issue of coercion, summarised the evidence on this issue, from which it appeared that during the voyage out to Persia and thence towards Aden, the master, who had sailed with sealed orders which he was told to conceal from the owners, received a stream of conflicting instructions from the charterers and Zonca, who wished him to proceed, and from the owners, who objected to the adventure, when they heard of it, and claimed that the charterers were in breach. Finally, the ship was boarded outside Aden by an Italian representative of the owners, who told the master to put straight into port, which he did. The proper inference was, that the master had for some time made up his mind to obey his owners, and was not coerced into going to Aden by threats, or by the R.A.F. flying around in an allegedly menacing manner, or by anything else. The plea of coercion failed, and the court had jurisdiction accordingly. The second main issue was the plaintiffs' title. The oil nationalisation law of 1951 contained a shadowy and ambiguous reference to compensation, but it amounted to no more than a suggestion that at some future time the question of compensation might be considered; the plaintiffs received no *quid pro quo*, and would have to rely solely on the bounty of the expropriator. It had been said that, under international law, compensation must be "adequate, effective, and prompt." English courts would not invalidate an act of confiscation by a State of the property of its own nationals; the question was, whether that rule applied in the case of a non-national. The plaintiffs contended that no State should give effect within its own jurisdiction to a foreign law contrary to its own public policy or to the essential principles of morality; secondly, that a foreign law which was contrary to international law or in violation of international comity need not be supported. International law was to be ascertained from decided cases and the writings of jurists. Since *Wolff* v. *Oxholm* (1817), 6 M. & S. 92, the English courts had refused to give effect to foreign confiscatory legislation. The same view had been taken in modern times by courts in France, Poland, Germany, and Italy. In 1922 the Hague Court had said that the passage in the U.S. constitution which provided "No person shall be deprived of . . . property without due process of law; nor shall private property be taken for public use without just compensation" was in complete accord with the international public law of all civilised countries. The defendants had relied on *A. M. Luther Co.* v. *James Sagor & Co.* [1921] 3 K.B. 532; but that case was concerned with the confiscation of the property of subjects of the confiscating government, and the remarks of Scrutton, L.J., were much wider than necessary. The opinions of jurists were also overwhelmingly in favour of the plaintiffs. For those reasons, the court, following international law as incorporated in the domestic law of Aden, must refuse validity to the oil nationalisation law in so far as it related to nationalised property of the plaintiffs within its jurisdiction. His lordship also dealt with a number of subsidiary points of defence, and in particular found himself unable to agree that the charterers were *bona fide* purchasers. Judgment for the plaintiffs.

APPEARANCES: *Sir Hartley Shawcross*, Q.C., *J. Megaw* and *E. W. Nunn* (*Linklaters & Paines* and *William A. Crump & Son*); *P. K. Sanghani*; *A. E. Kazi*; *M. A. Mansoor*.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.] **[1 W.L.R. 246**

Mr. Justice WYNN PARRY has been elected vice-chairman of the Council of Legal Education in succession to Sir Sir HENRY MACGEAGH, Q.C., who was recently elected chairman. The MASTER OF THE ROLLS has been nominated by Lincoln's Inn to succeed Lord Morton of Henryton as a member of the council.

Mr. CARL AARVOLD has been appointed chairman of the Agricultural Land Tribunal for the Yorkshire Division of the Yorkshire and Lancashire Area in the place of Judge Archibald, who resigned from the chairmanship on his appointment as a county court judge.

SURVEY OF THE WEEK

HOUSE OF LORDS

Progress of Bills

Read First Time :—

Berkshire County Council Bill [H.L.] [21st January.
Bromley Corporation Bill [H.L.] [21st January.
Cheshire County Council Bill [H.L.] [21st January.
City of London (Central Criminal Court) Bill [H.L.] [21st January.
Dudley Extension Bill [H.L.] [21st January.
Foundling Hospital Bill [H.L.] [21st January.
Gateshead Extension Bill [H.L.] [21st January.
Great Ouse River Board (Revival of Powers &c.) Bill [H.L.] [21st January.
Huddersfield Corporation Bill [H.L.] [21st January.
Leasehold Property Act and Long Leases (Scotland) Act Extension Bill [H.L.] [22nd January.

To extend for a further period the operation of the Leasehold Property (Temporary Provisions) Act, 1951, and the Long Leases (Temporary Provisions) (Scotland) Act, 1951.

London Hydraulic Power Bill [H.L.] [21st January.
Manchester Corporation (Advertisements) Bill [H.L.] [21st January.
National Trust Bill [H.L.] [21st January.
Newbury Corporation Bill [H.L.] [21st January.
Runcorn-Widnes Bridge Bill [H.L.] [21st January.
South Essex Water Bill [H.L.] [21st January.
Warkworth Harbour Bill [H.L.] [21st January.

Read Second Time :—

Agricultural Land (Removal of Surface Soil) Bill [H.C.] [20th January.
Births and Deaths Registration Bill [H.L.] [22nd January.
Law Reform (Personal Injuries) (Amendment) (Scotland) Bill [H.C.] [20th January.

HOUSE OF COMMONS

A. Progress of Bills

Read Second Time :—

Accommodation Agencies Bill [H.C.] [23rd January.
Harbours, Piers and Ferries (Scotland) Bill [H.C.] [23rd January.
White Fish and Herring Industries Bill [H.C.] [20th January.

B. Questions

New Houses (Selling Prices)

Mr. Marples said it was hoped to make an announcement later in the session regarding the selling price of houses at present controlled by the Building Materials and Housing Act, 1945, and by s. 43 of the Housing Act, 1949. [20th January.

Factories Acts (Prosecutions)

Mr. Watkinson stated that in 1952 there were 1,250 prosecutions for breach of the provisions of the Factories Acts of which 729 related to contraventions of safety requirements. Of these, 366 were in respect of death or injury by accident. [20th January.

Royal Commission on Capital Punishment

The Home Secretary said that the Royal Commission on Capital Punishment had been appointed on 6th May, 1949. It had held public sittings on twenty-seven days, and the last sitting at which evidence was given had been 6th December, 1951. He understood that the Commission expected to present their report in the course of the next few months. [21st January.

Housing Act, 1949 (Grants)

Mr. Hale asked whether the Minister was aware that a number of *bona fide* applications for assistance under the provisions of the Housing Act, 1949, in respect of alterations and improvements had been refused on the ground that the application was made after the work had commenced. Would he take steps to publicise the provisions of the Act and to abolish this technical rule which was depriving many people of the benefit of the Act ? Mr. Marples said he was aware of this difficulty, but he could not override statutory conditions. He was considering how to make the facilities available more widely known. [22nd January.

STATUTORY INSTRUMENTS

Cotton Waste Reclamation Wages Council (Great Britain) Wages Regulation Order, 1953. (S.I. 1953 No. 58.) 6d.
County of Inverness (Finlarigg Burn) Water Order, 1953. (S.I. 1953 No. 56 (S.4).) 6d.
Diseases of Animals (Extension of Definition of Poultry) Order, 1953. (S.I. 1953 No. 37.)
Draft **Jewellery and Silverware** Council (Dissolution) Order, 1953. 6d.
Exeter-Leeds Trunk Road (Parkend Diversion) Order, 1953. (S.I. 1953 No. 50).
Great Ouse River Board (Nightlayers Internal Drainage District) Order, 1952. (S.I. 1953 No. 53.) 5d.
Great Ouse River Board (Westmoor Internal Drainage District) Order, 1952. (S.I. 1953 No. 52.) 5d.
Gretna—Stranraer—Glasgow—Stirling Trunk Road (South of Kewnston and Other Diversions) Order, 1953. (S.I. 1953 No. 32.)
Draft **Ham House** Grounds Regulations, 1953. 5d.
Inverness and Moray County Councils (Dulnain Bridge) Water Order, 1953. (S.I. 1953 No. 57 (S.5).)
Local and Other Authorities (Scotland) (Transfer of Stock) Regulations, 1953. (S.I. 1953 No. 42 (S.3).) 8d.
London—Edinburgh—Thurso Trunk Road (Larbert Cross Diversion) Order, 1953. (S.I. 1953 No. 51).
London Traffic (Prescribed Routes) (No. 3) Regulations, 1953. (S.I. 1953 No. 60.)
Mid and South East Cheshire Water Board Order, 1952. (S.I. 1953 No. 55.) 8d.
Miscellaneous Fuel Orders (Revocation) Order, 1953. (S.I. 1953 No. 59.)
New Forest (Confirmation of Byelaw) Order, 1953. (S.I. 1953 No. 54.)
Old Metal Dealers Order, 1953. (S.I. 1953 No. 33.)
Draft **Osterley Park** Grounds Regulations, 1953. 5d.
Perth Water Order, 1953. (S.I. 1953 No. 63 (S.6).)
Psittacosis or Ornithosis Order, 1953. (S.I. 1953 No. 38.) 5d.
Rice (Amendment) Order, 1953. (S.I. 1953 No. 30.)
Rubber Reclamation Wages Council (Great Britain) Wages Regulation Order, 1953. (S.I. 1953 No. 22.) 6d.
Stopping up of Highways (Croydon) (No. 1) Order, 1953. (S.I. 1953 No. 34.)
Stopping up of Highways (Reading) (No. 1) Order, 1953. (S.I. 1953 No. 61.)
Stopping up of Highways (Sheffield) (No. 1) Order, 1953. (S.I. 1953 No. 35.)
Stopping up of Highways (Surrey) (No. 1) Order, 1953. (S.I. 1953 No. 36.)
Stopping up of Highways (Warwickshire) (No. 1) Order, 1953 (S.I. 1953 No. 62.)
Wild Birds Protection (County of Inverness) Order, 1953. (S.I. 1953 No. 70 (S.11).) 6d.
Wild Birds Protection (County of Nairn) Order, 1953. (S.I. 1953 No. 73 (S.14).)
Wild Birds Protection (County of Orkney) Order, 1953. (S.I. 1953 No. 71 (S.12).) 5d.
Wild Birds Protection (County of Peebles) Order, 1953. (S.I. 1953 No. 67 (S.9).)
Wild Birds Protection (County of Ross and Cromarty) Order, 1953. (S.I. 1953 No. 68 (S.10).)
Wild Birds Protection (County of Stirling) Order, 1953. (S.I. 1953 No. 66 (S.8).)
Wild Birds Protection (County of Sutherland) Order, 1953. (S.I. 1953 No. 72 (S. 13).)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

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Conveyance with Covenant to Allow Vendor to Remain for Rest of His Life—Tenant for Life under Settled Land Act, 1925—Capacity of Vendor to Create Tenancy

Q. A is the owner of Blackacre in fee simple. The property is subject to a mortgage of £600 and A (who is a pensioner) finds it difficult to meet the interest payments. He has therefore proposed to his son, B, to sell the property to B for the sum of £600 subject to the condition that he, A, shall remain in undisturbed possession of Blackacre for the remainder of his life. We propose therefore to draw a conveyance transferring the fee simple interest from A to B for the sum of £600. (1) Having regard to the fact that the value of Blackacre (with vacant possession) would probably be £2,500, is it your opinion that this conveyance would attract *ad valorem* stamp duty? (2) We propose to insert in the conveyance a covenant on the part of B that A shall continue in the free and uninterrupted user of the property for his lifetime subject only to the payment of the rates by A. Is such a covenant desirable, and is any precedent known to you? (3) It is assumed that any tenancy created by A would be null and void as against B having regard to the fact that A will have no legal estate.

A. (1) We do not consider that the vacant possession value of Blackacre is relevant for present purposes, since B will have to wait until A dies before obtaining vacant possession and in the meantime will be paying mortgage interest while receiving no rent. Having regard to A's continued interest in the property it may well be worth little more than £600 to B and, if so, we can see no objection to that figure being inserted as the amount of the consideration, stamp duty being *ad valorem* on that figure. (2) We do not know of any precedent for a covenant such as that suggested by our subscribers and feel that its insertion would be undesirable owing to its possessing the appearance of creating a settlement otherwise than by the procedure laid down by s. 4 of the Settled Land Act, 1925, and under which A would be tenant for life. The transaction being for value, an agreement to settle might result. In our opinion, it would be preferable for B to take an ordinary conveyance and at the same time to grant to A a lease for ninety years, should A so long live, at an annual rent of a peppercorn and containing a covenant by A to pay the rates. The lease would not be binding on the mortgagee unless he consented in writing. (3) If A did not have the legal estate he could not create a tenancy binding the legal estate, but the covenant mentioned by our subscribers would appear to give A the right to call for the legal estate. If, however, our suggestion of a lease is adopted, a covenant against underletting can be inserted.

Will—Legacies Payable After Life Interest—Whether Vested or Contingent

Q. A testator who died in 1920 after leaving his estate to his trustees upon trust for sale directed them to hold the residuary trust funds in trust to pay the income to his wife for life, and after her death he directed his trustees to stand possessed of the residuary trust funds upon trust thereout to pay the following legacies, namely, . . . (the words given are the words used in the will), and subject to the payment of such legacies the residuary trust funds were left to certain named persons if surviving the testator as therein mentioned. In a codicil the testator gave further legacies "payable on the death of my wife." The tenant for life has just died and many of the named persons bequeathed legacies, whilst surviving the testator, have predeceased the tenant for life. The question arises as to the time of vesting of the legacies in remainder; whether, being to named persons at a certain definite future time after a future event, they are in consequence contingent, or whether, being given after a life estate in the trust fund with a direction to pay after the decease of the legatee for life, the postponement being on account of the prior life interest, the legacies in remainder vested at the death of the testator. Accordingly, are the legacies in remainder (1) in the will, and (2) in the codicil vested or contingent?

A. We consider that it is clear that the legacies given by both the will and the codicil were vested on the death of the testator in 1920, and that the postponement of distribution until the death of the wife does not import any contingency that the legatees must survive her in order to qualify for these legacies. The general rule of construction being in favour of immediate vesting on the death of the testator (see Jarman on Wills, 7th ed., vol. II, p. 1373), this will only be displaced if there is a clear context annexing futurity to the substance of the gift. In the case of the present will the several successive interests are indicated and known as at the death of the testator, and the trust on the death of the wife is for payment only; the words of the codicil are still clearer in favour of payment only being postponed. In Precedent No. XIV of Hayes & Jarman's Forms of Wills, 15th ed., p. 225, there is a form of trust for the wife for life and after her death upon trust to pay thereout a sum of money to the testator's son, and this is declared to be vested in him on the testator's death. The note to this clause states, however, that such declaration as to date of vesting is strictly unnecessary as the gift to the son would be construed to vest on the testator's death without such express words. The general rule will be found stated in *Billingsley* v. *Wills* (1745), 3 Atk. 219.

NOTES AND NEWS

Honours and Appointments

The Queen has been pleased to signify Her Majesty's intention of appointing Mr. Albert Dennis Gerrard, Q.C., to be a judge of the High Court of Justice in succession to Mr. Justice Pritchard.

Mr. Douglas Neish has been appointed Controller of Stamps and Registrar of Bank Returns in succession to Mr. F. S. Tredinnick and Mr. W. J. Taylor has been appointed Deputy Controller of Stamps and Assistant Registrar of Bank Returns in succession to Mr. A. W. Buckley.

Mr. C. Shaw, a legal assistant in the Solicitor's Department of the Commissioner of Police at New Scotland Yard, has been appointed an assistant solicitor in the West Riding County Prosecuting Solicitor's Department.

Mr. R. Howard Moore, Clerk of Baildon Council, has been appointed chairman of Baildon Food Control Committee.

The British Transport Commission announce the following consequential appointments in their legal service on the retirement of Mr. T. Hatto, assistant chief solicitor, Conveyancing Division, Euston Station, on 20th February, 1953: Mr. E. A. Boothroyd, legal adviser to the Docks and Inland Waterways Executive, to be assistant chief solicitor of the Conveyancing Division, Euston Station; Mr. J. Rigby, assistant solicitor, Litigation and Prosecutions Division, to be legal adviser to the Docks and Inland Waterways Executive; Mr. J. D. Tattersall, solicitor in charge of the York office, to be assistant solicitor, Litigation and Prosecutions Division, King's Cross Station; and Mr. B. H. Clegg, senior solicitor assistant, Parliamentary and General Division, to be acting solicitor in charge of the York office.

Personal Notes

Mentioning that Major F. G. Scott had not missed a single quarter sessions in his twenty-five years as Clerk of the Peace for Oxfordshire, the chairman, Judge Donald Hurst, described it as "a wonderful record" when Major Scott attended his last quarter sessions in that capacity this month.

Miscellaneous

A room at King's College, London, set aside and equipped as a memorial to Professor Harold Potter, Dean of the Faculty of Laws at the college from 1931 to 1950, was opened recently by Professor E. C. S. Wade, Downing Professor of the Laws of England at Cambridge University. The room will accommodate about twenty students and is equipped with the Law Reports and the English Reports. At the ceremony, speeches recalling Professor Potter's work were made by Professor Wade, Professor R. H. Graveson, the present Dean of the Faculty, and the Principal of the College, Mr. P. S. Noble.

COMMITTEE ON SHARES OF NO PAR VALUE

The Committee appointed by the President of the Board of Trade on 29th December, 1952, to consider, under the chairmanship of Mr. Montagu L. Gedge, Q.C., whether it is desirable to amend the Companies Act, 1948, so as to permit the issue of shares of no par value, have decided to invite various organisations and individuals to submit written statements of their views on the subjects which fall within the scope of the Committee's enquiry. These organisations and individuals will be invited to submit general observations, and also to supply information or make suggestions under the following main headings :—

The manner in which the no par value system operates in other countries; advantages and disadvantages; possible abuses; whether the system should be adopted in Great Britain and, if so, whether any limitations or restrictions should be imposed and what safeguards should be provided.

When the Committee have studied the written statements submitted, they will proceed to hear oral evidence.

The Committee will be prepared to receive the observations of any organisation or individual, whether they have general suggestions to make or particular suggestions under any one, or all, of the headings set out above. Communications should be sent to the Secretary of the Committee at Lacon House Theobalds Road, W.C.1, if possible by 28th February, 1953.

THE LAW SOCIETY SPRING LECTURE COURSE

Owing to indisposition the talk which was to have been given by Sir Gerald Dodson on " The Central Criminal Court and its Judges " on 4th February as part of the Spring Lecture Course arranged by the Council of The Law Society has been postponed until Wednesday, 4th March, 1953. Tickets for 4th February will be available for the 4th March or money will be refunded on application to The Law Society's Hall. Sir Gerald Dodson's talk on 4th March will start at 5.0 p.m.

The next Quarter Sessions for the County Borough of Smethwick will be held at the Law Courts, Crocketts Lane, Smethwick, on Tuesday, 10th February, at 10.30 a.m.

Hansard (House of Lords) of 22nd January states that in the tables of legal representation before tribunals furnished to the House by the Lord Chancellor (reproduced at pp. 13 and 14, *ante*) " price regulation committees " should have appeared not in Table I but in Table II (Tribunals before which Legal Representation is Allowed Only by Consent of Some Person).

PRE-WAR GERMAN TRADE MARKS REGISTERED IN UNITED KINGDOM

Arrangements for Disposal by Custodian of Enemy Property

At the outbreak of war in 1939 there were over 4,000 trade marks on the United Kingdom Register of trade marks, the proprietors of which were German enemies. Except in certain special cases, these marks remained on the register during the war in the names of the German proprietors and have since been vested in the Custodian of Enemy Property for England.

Subject to the protection of British and other Allied interests, it is now intended to clear the register of such of these marks as need no longer remain registered, and to return most of the remainder to the former German proprietors or their successsors in title. A Board of Trade announcement made on 28th January, 1953, indicates the procedure which will be followed to achieve these ends and sets out the action to be taken by the former German proprietors or by others interested in particular marks or desirous of objecting to their return to the former German proprietors. The marks will be treated individually; the Custodian will consider each case on its merits and makes no general promise that any particular mark will be cancelled or returned.

Broadly speaking, the procedure is that the former German proprietors of certain categories of marks or their successors in title should, if still interested in their marks, request the assignment of the marks to them by the Custodian. An opportunity will be given to British and other Allied interests to object to any such assignment before the Custodian acts on the requests.

If a *prima facie* case is made out against the return of a mark to the former German proprietor or, in any case, if the mark in question was registered in Pt. A of the register since 3rd September, 1932, the Custodian failing an acceptable agreement between the parties concerned will not assign the mark to the former proprietor. But the latter can in such a case attempt to recover the registration by applying to the Registrar of Trade Marks for re-registration of the mark, and the Custodian will consider cancelling the existing registration to allow the application to proceed.

Full details are given in a notice published in the Trade Marks Journal and the Official Journal (Patents) of 28th January, 1953.

SOCIETIES

The annual general meeting of the Newcastle upon Tyne Incorporated Law Society was held in the Society's library on 22nd January, 1953, and was presided over by the President, Mr. Philip Standring Layne. The President in the course of his address pointed out that this was the fourth largest provincial society and was in fact the largest provincial society that had adopted a minimum scale. The following officers were elected: President: Mr. Hugh Leslie Swinburne; Vice-President: Mr. Henry Cecil Ferens; Hon. Treasurer: Mr. Stanley Grenville March; Hon. Secretary: Mr. Thomas Milnes Harbottle; Hon Librarian: Mr. Philip Standring Layne. The membership of the Society is now 314. In the evening 300 members and guests dined at the Old Assembly Rooms. The retiring President, Mr. Philip Standring Layne, presided. Amongst those present were the Lord Bishop of Newcastle upon Tyne, Mr. Justice Donovan, Mr. Justice Havers, Mr. Justice Glyn-Jones, the Chancellor of Durham Chancery Court, Judge Richardson and Mr. W. Charles Norton, a member of the Council of The Law Society. The toast of " The Bench " was proposed by Mr. W. Stanley Mitcalfe, M.C., and replied to by Mr. Justice Donovan. The toast of " The Guests " was proposed by Mr. A. Brodrick Thompson and replied to by Mr. W. Charles Norton.

The Union Society of London (meetings in the Common Room, Gray's Inn, at 8.0 p.m.) announces the following subjects for debate in February, 1953: Wednesday, 4th February, " That this House would welcome an extension of the practice of birth control "; Wednesday, 11th February, joint debate with the Sylvan Debating Club, " That the present system of compulsory education is a failure "; Wednesday, 18th February, " That this House disapproves of the practice of spiritualism "; Wednesday, 25th February, " That this House welcomes Marshal Tito's visit to this country."

The United Law Society announces the following debates to be held in February, 1953, at Gray's Inn Common Room, 10 South Square, Gray's Inn, at 7.30 p.m.: 2nd February, " That this House disapproves of the Government's proposals for the denationalisation of road transport "; 9th February, " That this House approves of the dissenting judgment of Denning, L.J., in *Leibo* v. *D. Buckmaster, Ltd., and Another* [1952] 2 All E.R. 1057 "; 16th February, " That members of this House would rather be called ' sir ' or ' madam,' than ' mate ' or ducks ' "; 23rd February, " That the Legal Aid and Advice Act, 1949, should now be brought into full operation."

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